

**EXHIBIT B TO PLAINTIFF'S
RESPONSE TO MOTION TO QUASH
AND CROSSMOTION TO EXPAND
SCOPE OF DISCOVERY
THIS EXHIBIT IS MARKED AS
CONFIDENTIAL IN ACCORDANCE
WITH PTO #12 ENTERED IN MDL 1968**

In Re:

Digitek

James Fitzpatrick

May 20, 2009

Confidential – Subject to Further Confidentiality Review

GOLKOW TECHNOLOGIES, INC.

Excellence In Court Reporting For Over 20 Years

877.370.3377

deps@golkow.com

Original File jf052009.txt

Min-U-Script®

James Fitzpatrick

Confidential – Subject to Further Confidentiality Review

1

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON DIVISION

- - -

IN RE: DIGITEK PRODUCTS : MDL NO.
LIABILITY LITIGATION : 1968

(This document relates to all cases.)

- - -

CONFIDENTIAL - SUBJECT TO FURTHER
CONFIDENTIALITY REVIEW

- - -

New York, New York
Wednesday, May 20, 2009

- - -

Videotaped Deposition of JAMES
FITZPATRICK held at Harris Beach PLLC, 100
Wall Street, 23rd Floor, on the above date,
beginning at 9:28 a.m., before Kimberly A.
Overwise, a Certified Realtime Reporter and
Notary Public.

- - -

GOLKOW TECHNOLOGIES, INC.
877.370.3377 ph | 917.591.5672 fax
deps@golkow.com

1 APPEARANCES:

2 MOTLEY RICE LLC
3 BY: FRED THOMPSON III, ESQUIRE
28 Bridgeside Boulevard
4 Mt. Pleasant, SC 29464
843-216-9118
5 fthompson@motleyrice.com

6 Counsel for MDL Plaintiffs' Steering
Committee

8 FRANKOVITCH, ANETAKIS, COLANTONIO & SIMON
9 BY: CARL N. FRANKOVITCH, ESQUIRE
337 Penco Road
10 Weirton, WV 26062
304-723-4400
11 carl@facslaw.com

12 Counsel for MDL Plaintiffs' Steering
Committee and West Virginia Plaintiffs

14 LEVIN, FISHBEIN, SEDRAN & BERMAN
15 BY: MICHAEL M. WEINKOWITZ, ESQUIRE
510 Walnut Street, Suite 500
16 Philadelphia, PA 19106-3697
215-592-1500
17 mweinkowitz@lfsblaw.com

18 Counsel for New Jersey and
Pennsylvania Plaintiffs

20 THE MILLER FIRM LLC
21 BY: PETER A. MILLER, ESQUIRE
108 Railroad Avenue
22 Orange, VA 22960
540-672-4224
23 pmiller@doctoratlaw.com

24 Counsel for Pennsylvania Plaintiffs

1 APPEARANCES: (Continued)

2 TUCKER ELLIS & WEST LLP
3 BY: MATTHEW P. MORIARTY, ESQUIRE
4 JULIE A. CALLSEN, ESQUIRE
5 MICHAEL ANDERTON, ESQUIRE
6 1150 Huntington Building
7 925 Euclid Avenue
8 Cleveland, OH 44115-1414
9 216-696-2276
10 matthew.moriarty@tuckerellis.com
11 julie.callsen@tuckerellis.com
12 michael.anderton@tuckerellis.com

13 Counsel for Actavis Defendants

14 HARRIS BEACH, PLLC
15 BY: STEVEN A. STADTMAUER, ESQUIRE
16 100 Wall Street, 23rd Floor
17 New York, NY 10005
18 212-687-0100
19 sstadtmauer@harrisbeach.com

20 Counsel for New York and New Jersey
21 Actavis and Mylan Defendants

22 SHOOK, HARDY & BACON, LLP
23 BY: ERICKA L. DOWNIE, ESQUIRE
24 1155 F Street, NW, Suite 200
25 Washington, DC 20004
202-783-8400
edownie@shb.com

Counsel for Mylan Defendants

James Fitzpatrick

Confidential – Subject to Further Confidentiality Review

4

1 APPEARANCES: (Continued)

2
3 ALLEN GUTHRIE & THOMAS, PLLC
4 BY: ZACKARY B. MAZEY, ESQUIRE
5 500 Lee Street East, Suite 800
6 Charleston, WV 25301
7 304-720-4226
8 zbmazey@agmtlaw.com

9 Counsel for West Virginia Actavis
10 Defendants

11 ALSO PRESENT:

12 Meghan Johnson Carter, Motley Rice LLC

13 John Duff, Esq., Actavis
14
15
16
17
18
19
20
21
22
23
24
25

Confidential – Subject to Further Confidentiality Review

61

1 A I mean, I'm not sure. We talked for
2 over an hour. I'm not sure where you mean
3 exactly.

4 Q Let me ask you one more question.
5 US SOD, what is that?

6 A Solid oral dose. It's a reference
7 to the solid oral dose business in the United
8 States.

9 Q I'm hearing but I'm actually not --
10 it's terrible, but I'm not registering it.
11 The what?

12 A Solid oral dose businesses.

13 Q Solid oral dose?

14 A Yes.

15 Q Well, now, is that an entity?

16 A No.

17 Q What reference are you -- I mean,
18 what is US SOD? What does that refer to?

19 A The solid oral dose businesses in
20 the United States.

21 Q Now, you're not talking about every
22 solid oral dose business in the United States;
23 you're talking about an Actavis solid oral
24 dose business in the United States?

25 A That's correct.

Q So US SOD would encompass Actavis
Totowa LLC, Actavis Elizabeth LLC, Actavis
3 Sunrise LLC. Would it also include
4 Actavis Inc.?

5 MR. MORIARTY: Objection; form.

6 A There's a couple questions in there.

7 Q Okay. Tell me what entities are
8 included in the US SOD umbrella.

9 A Actavis Totowa LLC, Actavis
Elizabeth LLC.

11 Q Okay. Now, are there any other
12 Actavis entities in the United States that
13 make solid oral dose pharmaceuticals?

14 A No.

15 Q What does Actavis Sunrise make?

16 A They're an R&D facility.

17 Q You're saying they don't make
18 anything for sale?

19 A No.

20 Q Are there any other Actavis entities
21 in the United States other than the ones that
22 we've already talked about?

23 A Yes.

24 Q Tell me -- list those for me.

25 A Actavis Mid-Atlantic LLC.

Confidential – Subject to Further Confidentiality Review

63

1 Q Okay.

2 A And Actavis Inc.

3 Q What does Actavis Mid-Atlantic do?

4 A They're semisolids and liquids.

5 Q What is a semisolid?

6 A Like a cream or a gel.

7 Q Now, you refer to yourself as
8 director of HR at US SOD; right?

9 A That's correct.

10 Q Is that a name by which you
11 internally organize -- strike that.

12 Do you get your paycheck from
13 US SOD?

14 A No.

15 Q Who do you get your paycheck from?

16 A My payroll is done through Actavis
17 Elizabeth LLC.

18 Q And where is your office physically
19 located?

20 A In Elizabeth, New Jersey, and in --
21 primarily, and also in Morristown, New Jersey.

22 Q Morris?

23 A Morristown.

24 Q What is in Morristown?

25 A The Actavis US headquarters.

Confidential – Subject to Further Confidentiality Review

64

1 Q Now, is there an entity known as
2 Actavis USA?

3 A No.

4 Q So when you say the Actavis US
5 headquarters, that's simply an informal way of
6 referring to the Actavis operations in the
7 United States; is that right?

8 A It's an informal way of referring to
9 the Actavis businesses in the United States,
10 more than just operations.

11 Q Now, is Actavis Inc. the parent of
12 Actavis Totowa LLC and Actavis Elizabeth LLC?

13 A I'm not sure what you mean by
14 "parent," but they report up into Actavis --
15 those two entities report up into Actavis Inc.

16 Q Does -- who owns the control and
17 financial interest of Actavis Totowa LLC and
18 Elizabeth LLC?

19 A Actavis Inc.

20 Q Does anyone other than Actavis Inc.
21 own any either financial or control interest
22 in Actavis Totowa LLC or Actavis Elizabeth
23 LLC?

24 A No.

25 Q Now, the Mid-Atlantic LLC, is that

Confidential – Subject to Further Confidentiality Review

80

1 consulting firm that was retained, who would
2 know, first of all, whether that had happened;
3 and, secondly, who would have dealt with them?

4 A I'm not sure what McKinsey does.
5 But whoever hired them would know what they do
6 best, so it kind of gets back to the
7 department head who hired them.

8 Q All right. Who would deal with any
9 outside public relations firm or public
10 affairs group that may be retained? Who from
11 Actavis Inc. or Totowa or Elizabeth would have
12 dealt with that third-party relationship?

13 A No one.

14 Q And the reason for that is?

15 A That would have been done by someone
16 at headquarters.

17 Q And when you say "headquarters,"
18 you're talking about the building that you
19 referred to as Actavis USA?

20 A The Morristown facility, yes.

21 Q But now there is no Actavis USA
22 entity?

23 A That's correct.

24 Q So you're simply referring to the
25 building where the central management of

Confidential – Subject to Further Confidentiality Review

81

1 Actavis Inc. has its operations --

2 A That's correct.

3 Q -- isn't that right?

4 A That's correct.

5 Q Do you know if Actavis Inc., Actavis
6 Totowa, or Actavis Elizabeth ever retained a
7 third party, an outside consultant, with
8 regard to FDA or regulatory issues?

9 A Yes.

10 Q And what's the answer to that?

11 A What's the question? I said "yes."

12 Q The answer is: Do you know if they
13 ever did?

14 A Yes.

15 Q You said "yes." And the question
16 is: Did they ever?

17 A Yes.

18 Q Who was retained?

19 MR. MORIARTY: Objection.

20 A Parexel.

21 Q I'm sorry?

22 A Parexel. It's the name of a
23 company.

24 Q You know, I hate to -- I see you
25 forming the words and I know you think -- but

1 as possible.

2 Q And the charts -- who are the charts
3 relied upon in the performance of the
4 functions of the business?

5 A Who relies on the org charts?
6 Outside the inspection? Anyone who wanted to
7 take a look at the broader organization could
8 utilize them for that purpose.

9 Q And they rely on the accuracy of the
information contained therein; is that right?

11 A Yes.

12 Q Now, when I look through these
13 charts -- well, strike that.

14 Do you know how many product lines
15 were made at the Little Falls plant?

16 A When?

17 Q In April of 2008 when you got there.

18 A Before they stopped manufacturing?

19 Q Yes, sir.

20 A I believe 104.

21 Q When I look through these
22 organizational charts, there's no reference at
23 all to any product line; right?

24 A Yes.

25 Q I mean, we go through these and

1 there's not a single product, there's not a
2 Digitek, there's not, you know -- I can't even
3 begin to name them -- no Toprol, no Accuprin,
4 none of them, no reference to an individual
5 product line. How does the company account
6 for the responsibilities of a product line
7 from inception to manufacture to quality to
8 packaging to distribution? How does that
9 responsibility work in Actavis Totowa?

10 A That would be the responsibility of
11 a department. It depends upon what that
12 department is responsible for. They'd be
13 responsible for all the products that came
14 through the facility and not just one product.

15 Q Is there a person who is a product
16 manager for a specific drug?

17 A Where?

18 Q At Actavis Totowa prior to the
19 closing of the plant.

20 A No, not that I'm aware of.

21 Q Say let's take a drug at random.
22 Let's take Digitek. Is there an individual
23 who's charged with the responsibility for
24 overseeing that product line?

25 A No.

1 Q How would I look through this chart
2 to find out who the person who's responsible
3 for the production of Digitek is identified?

4 MR. MORIARTY: Objection; form.
5 Go ahead.

6 A Someone isn't responsible for the
7 production of Digitek. Someone's responsible
8 for the production of all the products.

9 Q Okay. There were 105. Would each
10 manager or each person occupying a slot on
11 these organizational charts be responsible for
12 the entire 105 products?

13 A I think a department is responsible
14 within their function for all 104 products.

15 Q Within the department, how would
16 they organize themselves to make product, to
17 make an individual product?

18 A Which department?

19 Q Manufacturing.

20 A Manufacturing? I don't know where
21 they get their production schedule from, but
22 they get a production schedule. They have
23 orders to fulfill. They fulfill those orders,
24 and it moves on to the next process. And
25 there's groups that get involved with that all

1 along the way.

2 Q Is there any organizational chart,
3 organizational manual, procedural guide, or
4 book of regulations that tells an employee of
5 Actavis Totowa what the standard method for
6 manufacture, testing, packaging, and
7 distribution of an individual drug is?

8 MR. MORIARTY: Objection; scope
9 of the notice.

10 Answer if you can.

11 A I'm not sure.

12 Q How does -- okay. You mentioned
13 something called a production order, that
14 there's some order that's received to produce
15 some drug, and I think you said you don't know
16 where that comes from.

17 A I believe it starts with the sales
18 forecast, what's being sold. Then it backs
19 into supply chain. Then it goes to
20 manufacturing. Then it goes to packaging.
21 Then it's distributed. There's other
22 functions that apply along the way, but I
23 believe that's the normal chain of events.

24 Q So there is no individual expert in,
25 say, digoxin; that there are a series of

1 organization to bring the equipment, the
2 product, and the personnel to bear to produce
3 that product.

4 MR. MORIARTY: Objection; form.
5 Go ahead.

6 A I don't believe that's what I said.
7 I don't agree with your characterization of
8 it.

9 Q Well, let me just ask it again. How
10 does a product -- and let's take Digitek. How
11 does that product get produced by or did get
12 produced by the Actavis Totowa plant?

13 MR. MORIARTY: Objection;
14 scope.

15 If you know, go ahead.

16 A I'm not sure.

17 Q Who is the person who is in charge
18 of the Digitek product line in March of 2008?

19 A I'm not aware of anybody in charge
20 of a product line.

21 Q Now, this is a 30(b)(6) deposition.
22 You are the voice of Actavis Totowa. And
23 you're telling me that, as far as you know,
24 there was no one in charge of the Digitek
25 product line in March of 2008?